IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1614 OF 2003

IN

SUIT NO.1543 OF 2003

1(a) Smt.Neeta wd/o. Vasant Khimshia
and others. ...Plaintiffs.

vs.

1. M/s.N.L.Mehta & another. ...Defendants.

Mr.R.N.Dave i/b. M/s.N.N.Vaishnawa & Co., for Plaintiffs.

Mr.Khatri i/b. P.M.& Mithi & Co., for Defendant no.1.

CORAM: D.K.DESHMUKH,J.

DATED: 15th February, 2007.

P.C.:-

1. This is a notice of motion taken out by the original plaintiff. The original plaintiff has filed the suit seeking decree of specific performance of the agreement dated 6.4.1992. The plaintiff was occupying the premises in the building of the defendant no.1.

The defendant no.1 wanted to develop the property. Therefore, an agreement was entered into between the plaintiff and the defendant no.1 whereby in consideration of the plaintiff vacating the tenanted premises, the defendant no.1 agreed to give him a flat of 800 sq.ft in the new building that was to be constructed on the land, on the plaintiff paying an amount at the rate of Rs.300/- per sq. feet towards construction cost. The plaintiffs vacated the suit premises and handed over the possession on 20.2.1992. No development activities were taken up by the defendant no.1. Ultimately the plaintiffs came across a public notice dated 14.12.2002 issued by the defendant no.2 wherein it is stated that he is going to buy the property and if anybody else has any right of claim in relation to that, then claim should be lodged within 14 days. Pursuant to that notice, the original plaintiff lodged his claim and pointed out that he has agreement in his favour executed by the defendant no.1. It appears that thereafter, the defendant no.1 has executed a sale deed of the property in favour of defendant no.2 and the defendant no.2 is developing the property.

2. The original plaintiff has taken out the present notice of motion seeking an order of temporary injunction restraining the defendants from disposing of flat no.801 in the new building to be constructed on the land. Ad-interim order has already been granted by this Court which is presently operating. The defendant no.2 has

filed reply. I have perused the reply. In the reply the main claim of the defendant no.2 is that he does not have privity of contract with the plaintiff. In my opinion, the defence put up by the defendant no.2 has no substance. The defendant no.1 was admittedly the owner of the property, he had entered into the agreement with the plaintiff, and therefore, transfer of the property by defendant no.1 to defendant no.2 will subject to the rights acquired by the plaintiff. It is, thus, apparent that the plaintiff has made out a very strong prima facie case, and if the flat is disposed of by the second defendant, the plaintiff will suffer irreparable injury. The plaintiff is, therefore, entitled to interim relief. The ad-interim order dated 6.6.2003 is therefore, confirmed. The notice of motion is disposed of.